

Workers' Compensation Reform: “Ready, Fire, Aim!”

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Outline

- Background on legislative changes to WC systems
- Importance of getting goals right
- Importance of information and measurement
- Changing incentives changes behavior
- Goals and administration of an ideal, comprehensive reform

Background

Reform: A Loaded Term

- Reform implicitly assumes that something is wrong and needs correction
- To some, a “reform” is a “take away” or “restriction”
- The term is used here in the neutral sense of change

History of Reforms

- There were two great eras of major WC reform
 - Common forces were strongly influencing many state simultaneously
- 1972 post National Commission Report
- 1992 underwriting crisis
 - rising claims
 - stringent rate reviews

Normal Legislative Activity

- 2009: Nearly 800 bills introduced to date
- 2008: 765 introduced and 95 enacted
- 2007: 1,059 introduced and 220 enacted
- 2006: 714 introduced and 121 enacted
- 2005: 745 introduced and 120 enacted

Types of Legislation

- **Comprehensive**
 - Seeks changes in overall system performance
 - Modifies incentives
 - claiming
 - adjudication
 - disputes
 - return to work
 - Involves multiple stakeholders
- **Specific**
 - Correcting defects in a program or isolated aspect of the system
 - Typically will not alter claiming or adjudication behaviors

Importance of Clear Goals

Take Aim First



- As my impertinent speech title reveals, I believe that many WC legislative changes lack
 - Clear direction
 - Solid factual justification
 - A methodical follow up plan
- Effective reform needs a start with
 - clear goals
 - metrics for success or failure

Common Starting Point for Reform

- Comprehensive reforms: Typically rapidly rising rates relative to neighboring states
 - In part, focus on relative rates is facilitated by an easy, objective metric
- Rarely is poor worker treatment enough to stimulate a sweeping reform of benefits or claims administration

Comprehensive Reforms

- Comprehensive reforms are generally a collection of trade offs to secure a coalition and political success
- Typically contain
 - cost reduction elements
 - generally perceived as a ‘take away’ from some group
 - rarely win-win through system efficiency
 - indemnity increases (usually modest)

Politics of Reform

- Many reforms involve taking income and jobs from some groups involved in the administration of workers comp
- Politics will decide who has 'rights to the status' quo
- Even if some parties of interest can be ignored politically, their position should be considered carefully

Three Common Reforms Based on Fuzzy Thinking

1. Dispute Reduction

- The high cost of resolving claims disputes is sometimes a major goal of reforms
- Commonly this involves reductions in litigation rates and attorney fees
- Applicants bar will fight back
 - “workers unable to find representation to fight abusive claims treatment”
- Reforms should target specific causes for rising litigation rates
- Outcomes for workers must be carefully measured and used in the public debate

2. Medical Cost Containment

- The rapidly rising cost of medical care per claim has unleashed a torrent of reforms
- The general cause for rising cost is misplaced incentives to providers
- Zeroing in on the specific provider behaviors is essential to good reform
 - over utilization
 - excessive use of drugs or surgery
 - high fees

3. Benefit Adequacy

- Critics often point to low wage replacement as a serious defect of WC
- Offering high net wage replacement
 - is equitable and just
 - creates incentives for claiming and resisting RTW
- Equitable goal must be matched with
 - strong disability management to control negative claimant behaviors
 - incentives to employers to accommodate injured workers in early, safe RTW

Post Reform Issues

- Amazingly, most of the major reforms of since 2000 still lack definitive indicators of success or failure

How Long Should It Take to See Result?



- Proof that the reform is working will depend on:
 - How clear the goals or measure of success is
 - Whether or not the reform has a clear start date with a known enforcement plan
 - Will the reform need to be tested in court before stakeholders view it as permanent?
- Most importantly, how diligent is the agency in collecting and analyzing data



Importance of Information

- Selling the need for reform is advanced by objective
 - proof of a problem
 - basis for projecting success of change
- Implementation of reform depends on good information
 - forestalling critics
 - directing resources to manage tasks

Role of Data

- Too often states collecting masses of data without good analysis and reporting
- Data must be accurate and suitable to the issues being addressed
- Medical reporting is a good case study of state data not being exploited to its fullest potential

Reform vs Re-engineering?

- Reforming a system to “fix” specific problems is inherently
 - Narrow
 - Reactive
 - Focuses on reducing employer costs
- Re-engineering a system to achieve radically better performance is
 - Comprehensive
 - Far sighted
 - Seeking more than employer cost savings

Goals for an Ideal System

- Injury prevention is strongly promoted
- Indemnity benefits are paid promptly and at near replacement of net wage loss
- Proactive disability management keeps period of lost time to minimum
- Medical treatment is excellent but only carried on to the extent needed to cure injury and restore function
- Disputes are minimized through clear laws, professional claims handling, and clear/consistent judicial decisions

Making Law

- Stakeholders should really get to understand the terms of the deal
- Principles in statute
- Technical detail in administrative rules
- Modeling other state laws that work
- Requiring reports by admin. agency
- Sunset provisions

Administration of Law

- Efficiency is continuously pursued through process improvement and aggressive application of IT
- Education of stakeholders reduces non-compliance
- Consistent and aggressive enforcement of all laws and administrative procedures

Summary

- Reforms to date have been ‘horse trades’ designed primarily to cut employer costs
- Cost cutting targets have not been adequately defined and measured
- Information and analysis can be a powerful force in reform
- Re-engineered system must start with ultimate goals and use radical means to achieve desired outcomes
- Good administration of law is key to reform success

Thank You

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